

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

VAL DAY, *et al.*,

Plaintiffs,

vs.

FORMAN AUTOMOTIVE GROUP,

Defendant.

Case No. 2:12-cv-00577-JCM-CWH

ORDER

This matter is before the Court on Plaintiff Val Day's Motion to Compel (#15), filed August 13, 2012.

Pursuant to Fed. R. Civ. P. 37(a)(3)(B), Plaintiff seeks to compel Defendant Forman Automotive Group to provide signed verifications to its Rule 33 responses.¹ A threshold requirement of a motion to compel under Rule 37(a) is that "[t]he motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." Fed. R. Civ. P. 37(a)(1). " Additionally, LR 26-7(b) provides that "[d]iscovery motions will not be considered unless a statement of the movant is attached thereto certifying that, after personal consultation and sincere effort to do so, the parties have been unable to resolve the matter without Court action."

Both the meet and confer requirement of Rule 37 and the personal consultation requirement of LR 26-7(b) serve important purposes. Compliance is required "to lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants, through the promotion of informal, extrajudicial resolution of discovery disputes." *Nevada Power v. Monsanto*, 151 F.R.D.

¹ Federal Rule of Civil Procedure 33(b)(5) provides that "[t]he person who makes the answers must sign them, and the attorney who objects must sign any objections."

1 118, 120 (D. Nev. 1993). The consultation obligation “promote[s] a frank exchange between
2 counsel to resolve issues by agreement or to at least narrow and focus matters in controversy before
3 judicial resolution is sought.” *Id.* In order to serve its purpose, parties must “treat the informal
4 negotiation process as a substitute for, and not simply a formal prerequisite to, judicial review of
5 discovery disputes.” *Id.* To do so,

6 [t]he parties must present to each other the merits of their respective positions
7 with the same candor, specificity, and support during the informal negotiations
8 as during the briefing of discovery motions. Only after the cards have been laid
9 on the table, and a party has meaningfully assessed the relative strengths and
10 weaknesses of its position in light of all available information, can there be a
11 “sincere effort” to resolve the matter.

12 *Id.*

13 In *Shuffle Master, Inc. v. Progressive Games, Inc.*, 170 F.R.D. 166 (D. Nev. 1996), the
14 Court identified two prongs to Rule 37's meet and confer requirement. First, the moving party must
15 provide a certification from counsel which “accurately and specifically conveys to the court who,
16 where, how, and when the respective parties attempted to personally resolve the discovery dispute”
17 – the certification requirement. *Shuffle Master*, 170 F.R.D. at 170. Second, the moving party must
18 actually confer or attempt to confer in good faith – the performance requirement. *Id.* The moving
19 party must move beyond cursory statements and “must adequately set forth in the motion essential
20 facts sufficient to enable the court to pass a preliminary judgment on the adequacy and sincerity of
21 the good faith conferment between the parties.” *Id.* at 171. A good faith attempt requires more
22 than the “the perfunctory parroting of statutory language,” it requires a “genuine attempt to resolve
23 the discovery dispute through non judicial means.” *Id.* Doing so accomplishes the underlying
24 policy of Rule 37(a)(1) and LR 26-7(b).

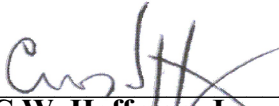
25 Absent compelling circumstances not present here, the mere exchange of letters has long
26 been seen as insufficient to satisfy the “personal consultation” requirement in this district. *See e.g.*,
27 *Hunter v. Moran*, 128 F.R.D. 115 (D. Nev. 1989). *Shuffle Master* made clear that the mere
28 exchange of letters is also insufficient to demonstrate a good faith effort to meet and confer under
Rule 37. *Shuffle Master*, 170 F.R.D. at 172. Simply put, the exchange of letters is an “inadequate
means” through which counsel may attempt to confer. To be sure, the exchange of letters may
serve to narrow or inform the issues prior to personal consultation, but both Rule 37(a)(1) and LR

1 26-7(b) require more.

2 Here, Plaintiff has not met the threshold meet and confer requirement for consideration of
3 the motion. The only indication of consultation between the parties is the exchange of letters.
4 Thus, the Court finds that Plaintiff's efforts to engage in meaningful discussions to resolve this
5 discovery disputes have been, to this point, inadequate. Accordingly,

6 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Compel (#15) is **denied without**
7 **prejudice.**

8 DATED this 14th day of August, 2012.

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11 **C.W. Hoffman, Jr.**
12 **United States Magistrate Judge**
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